

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

ORDER

Dilbhajan Singh & Anr. Versus Ashok Kumar Gupta.

S.B. Criminal Misc. Petition No. 850/2006
against the order dated 5-12-2005 passed
by the Addl. Chief Judicial Magistrate,
Raisinghnagar, in Criminal Case No.316/2001.

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Date of Order: November 24, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. S.L. Jain, for the petitioners.
Mr. Vijay Kumar, for the non-petitioner.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have challenged the order dated 5-12-2005 passed by the Additional Chief Judicial Magistrate, Raisinghnagar (for short, "the trial Court" hereinafter) as also seek quashing of the proceedings in criminal case No. 316/2001.

I have heard learned counsel for the parties. Carefully gone through the order impugned dated 5-12-2005 passed by the trial Court, whereby the trial Court dismissed the application filed by the petitioners under Section 245 of the

Code.

The facts and circumstances giving rise to the instant criminal miscellaneous petition are that non-petitioner Ashok Kumar Gupta filed a criminal complaint against M/s. Oriental Automobiles through its Directors petitioner No.1 Dilbhajan Singh, Jitendra Singh Jakkha, petitioner No.2 Amol Singh and Tajender Singh Siddu under Section 138 of the Negotiable Instruments Act 1881 (for short, "the Act" hereinafter) alleging therein that the firm M/s. Oriental Automobiles Ltd. is an authorized dealer of Mahendra & Mahendra Jeep. The petitioners No.1 and 2, Tejender Singh Jakha and Tejender Singh Siddu are the whole and sole Incharge, owners and partners of the said firm. It was also alleged that some amount was given by him for booking of certain vehicles amounting to Rs. 32 lac. It appears that after certain adjustment, some amount was due against the petitioners and therefore the petitioners, in order to discharge the liability, gave a cheque bearing No. 078576 dated 9-4-2001 amounting to Rs. 17 lac of the bank account held by them being C.A. Account No.3668. The petitioner No.1 is the signatory to the cheque. On being presented to the bank, i.e. Oriental Bank of Commerce, Branch Raisinghnagar, the cheque in question was returned unpaid and was dishonoured on the ground of insufficient fund to the account of the drawer. A notice demanding the payment of cheque amount within 15 days from

the date of receipt of the notice was given on 24-7-2001 and was sent under the registered post. The notice has been served on the petitioners. The petitioners failed to make the payment within the stipulated period of 15 days from the date of receipt of the notice and, therefore, the non-petitioner filed a complaint under Section 138 of the Act within the period of limitation. The notices of the complaint were served upon the petitioners and they appeared before the trial Court. During pendency of the trial, an application under Section 245 of the Code was filed by the petitioners before the trial Court seeking discharge of the accused-petitioners. By the order impugned, the trial Court dismissed the application. Hence this criminal miscellaneous petition.

It is contended by the learned counsel for the petitioners that there is no averment in the complaint that the petitioners were the incharge of and were responsible to the company for the conduct of business of the company and without there being such averment in the complaint, the requirement of Section 141 of the Act has not been fulfilled and, therefore the proceedings deserve to be quashed and the petitioners deserve to be discharged.

Learned counsel for the non-petitioner has supported the order impugned and contended that there is specific averment in the complaint that the petitioners are responsible

for doing everything of the company including the conduct of its business and they are owners for all the purposes and this fact has been averred in para No.1 of the complaint itself. It has further been contended that petitioner No.1 Dilbhajan Singh is the signatory to the cheque and, therefore, the complaint fulfills the requirement of Section 141 of the Act.

Learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr., 2006 (1) NIJ 97 (SC); and the decisions of the High Court in Jose Cristovam Pinto & Anr. Vs. Sahajanand Investments Pvt. Ltd. & ors., 2006 (2) NIJ 226 (Bom.); Everest Advertising Pvt. Ltd. Vs. State, 2006 (2) NIJ 159 (Del.); and Hazi Abadullah Vs. State of Rajasthan & Anr., 2006 (1) NIJ 378 (Raj.)

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

Section 141 of the Act provides that if a person committing an offence under Section 138 is a company, every person, who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly; provided that nothing contained in this sub-section shall render any person

liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent commission of such offence.

In *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.* (supra), the Hon'ble Supreme Court held that merely being a Director of a company is not sufficient to make a person liable under Section 141 of the Act. A Director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a Director in such cases. The Hon'ble Apex Court further held that so far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141 of the Act.

From a bare perusal of the complaint, it is revealed that in para No. 1 of the complaint itself, the non-petitioner has averred that the present petitioners, being the partners and owners of the firm, are responsible for doing everything of the company. Petitioner No.1 is the signatory of the cheque which has not been disputed by the learned counsel for the petitioners. Even otherwise, in view of the decision of the Hon'ble Supreme

Court in *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.* (supra), the petitioner No.1, being signatory of the cheque which has been dishonoured, is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141 of the Act.

So far as petitioner No.2 is concerned, he is similarly situated with the petitioner No.1 with regard to doing of every act of the company. The dictionary meaning of the expression "Karta-Dharta" is: one who has right to do everything and does everything; for doing everything; in-charge of all acts. Thus, in my view, it fulfills the requirements of Section 141 (1) of the Act. Though the exact words used in the statute under sub-section (1) of Section 141 of the Act have not been averred in the complaint, but the very essential ingredient to make the petitioners liable in conformity of sub-section (1) of Section 141 of the Act has been made out. It is not necessary that the exact words used in the statute are to be pleaded and what is necessary is that from the pleading, the essential ingredients of the section are made out, though, in my view, in the instant case the requirements of Section 141 of the Act have been fulfilled.

In this view of the matter, no case for quashing the criminal complaint is made out and the trial Court was justified in dismissing the application filed by the petitioners under Section 245 of the Code.

In view of the above discussion, I do not find any merit in the petition and it is dismissed accordingly. The ad interim stay order dated 19-7-2006 is vacated and the stay petition stands dismissed.

(H.R. PANWAR), J.

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